HIGH COURT OF DELHI

% Date of decision: July 15th, 2005.

+ Crl.L.P.87/2003 & Crl.M.61/2003

State Petititioner

through

! Ms.Mukta Gupta, Standing counsel

Versus

$ Kishan Pal & anr. Respondents.

through

^ in person.

Coram :

* Hon'ble Mr.Justice Manmohan Sarin.
Hon'ble Ms.Justice Rekha Sharma.

(1) Whether reporters of local paper may be allowed to see the judgment?

(2) To be referred to the reporter or not? yes

(3) Whether the judgment should be reported in the Digest ? yes

* Manmohan Sarin, J

1. This is an application moved by the State seeking

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leave to appeal, against the judgment & order dated 17th February, 2001, passed by the Additional Sessions Judge acquitting the respondents of charges under Section 302/307 read with section 34 IPC giving them the benefit of doubt.

2. It appears that application for leave to appeal had been prepared in June, 2001 and filed in July, 2001. The application is accompanied by an application under Section 5 of the Limitation Act being Crl.M.61/2003 seeking condonation of delay of fifty days in initial institution and a delay of one year, eleven months and 25 days in refiling the appeal. The appeal had been returned with objections.

3. Learned Standing counsel Ms.Mukta Gupta places reliance on a judgment of the Division Bench of this court in **State Vs. Suresh Kumar (Crl.L.P.52/2002) & Other connected appeals** wherein the Division Bench, while condoning the cases of enormous delay in filing of the appeals, has taken note of extra ordinary situation where 250 appeals had remained pending in the office of the State

counsel. The delay in institution as also delay in refiling, which ranged from 174 days to 1015 days was condoned, with a reasoned judgment.

4. Keeping the issue of condonation of delay apart, we requested the counsel to address us on merit to show if any case is made out for entertainment of the appeal otherwise respondents were present in court.

5. The question arising for consideration in this Leave to appeal, is whether the accused Kishan Pal and his wife Omvati pushed the deceased Ram Ji Lal and his wife Bela, following the quarrel on the roof top, with the knowledge and intention that pushing them would result in grievous injuries or death in the ordinary course of nature or it was a case in a scuffle while grappling with each other, the deceased and his wife accidentally fell down with parapet wall giving way? The learned Additional Sessions Judge on appreciation of evidence and in his judgment held that prosecution had failed to prove the case beyond reasonable doubt and accordingly acquitted

them of the charges under Sections 302/307 read with Section 34 IPC, giving them the benefit of doubt. Learned counsel for the State Ms.Mukta Gupta submits that minor discrepancies and variances have been treated as contradictions, fatal to the prosecution's case. She submits that discrepancies and variances alone cannot make the prosecution's case doubtful. She submits that quarrel and incident is admitted. The factum of estranged relationship has also been proved on record. In these circumstances, the testimony of the wife of the deceased Bela and her daughter should not have been disbelieved or ignored.

6. The case of the prosecution as set up is that accused Kishan Pal had an evil eye on the deceased's daughters. According to deceased' wife Bela, he had indulged in character assassination of her daughters by stating that two days prior to the incident, they were standing alone late at night in the gallery of their house, which had been protested. There was also an altercation with regard to plants having been plucked

which was sorted out by the intervention of Puran Chand, a tenant of Kishan Pal. As per the version of deceased's wife, she had gone to the roof on 22nd September, 1990 in the morning to throw garbage and giving water to tulsi plant, when Kishan Pal and his wife Omvati started abusing her and quarreled with her. On hearing the commotion, her husband came to the roof and they grappled with each other. She claims that accused Omvati shut her eyes with her palm and then accused Kishan Pal pushed her husband. Thereafter Omvati had pushed her down. Curiously, if her eyes had been shut by Omvati, then she could not have seen Kishan Pal pushing her husband down from the roof. The deceased's daughter Geeta claims that she had also gone to the roof but saw the incident from the stairs.

7. The Additional Sessions Judge after careful analysis of the evidence as led, found that the allegation regarding Kishan Pal having an evil eye on the daughters of the deceased was not established as no other independent witness had

supported the same and even Geeta, daughter of the deceased had not deposed and made any grievance on this count. Besides the altercation over plant had also been amicably resolved. It was also established on record that there was otherwise cordial relationship and parties were on visiting terms. The presence of the accused Omvati on the roof was not established. He reached the conclusion that grudge against the accused, if any, was in complainant's mind.

8. The Additional Sessions Judge set out the contradictions and has given reasons as to why the prosecution version suffers from contradictions and that the version of the accused of the fall being an accidental one is a plausible one. Significantly, it is the prosecution's own case that they were grappling with each other. There was a parapet boundary wall of two and half ft and four inches in width. A portion of this parapet wall had given way and the bricks that had fallen, were found on the ground by the I.O. In these circumstances, in view of the breaking of the parapet

wall and considering that the accused himself sustained fracture and injuries in the fall, the defence version is plausible. 21

In these circumstances, the judgment of the Additional Sessions Judge acquitting the accused and giving them the benefit of doubt cannot be faulted with. Leave to appeal is refused.

Mahmohan Sarin, J

July 15th 2005

Rekha Sharma, J

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